

Case

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

FILED

APR 27 2015

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF ILLINOIS
EAST ST. LOUIS OFFICE

Kevin Phelps

Plaintiff,

vs.

SALVADOR GODINEZ et al
Defendants.

CASE NO. 3:15-CV-00073-SMY-PMF

MOTION FOR A
Preliminary Injunction
&

Temporary Restraining ORDER.

STATE OF ILLINOIS)
) SS:
COUNTY OF Lawrence

SWORN AFFIDAVIT

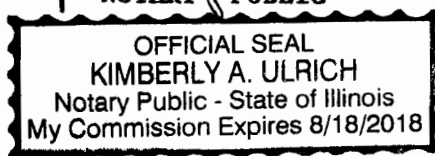
I, Kevin Phelps, After Being Duly Sworn Upon My Oath, Depose and State That the Following Matters are both True and Correct In Substance And in Facts:

That the attached papers are true and
in substance AND in facts.

Subscribed to and sworn before me
this 11th day of April 2015

SO STATED: Kevin Phelps

Kimberly A. Ulrich
NOTARY PUBLIC



I Kevin Phelps, am the plaintiff in this motion for a Preliminary Injunction & Temporary Restraining Order.

My Constitutional Rights are continue to be Violated, by I.D.O.C., & Lawrence C.C., are Violating my 14 Amendment; Procedural due process rights, regarding Cruel & unusual Punishment 8 Amendment, Dileberate Indifference to a Serious medical need that has been Diagnosed by a physician, Failure to protect, Failure to Classify inmates and Separate the particularly violent or vulnerable, & Violation of The Americans with Disabilities Act, by housing NONE ADA inmates in A.D.A. Cell for A.D.A. inmates, it is not enough useful space to get around in a wheel chair with another inmate in their, plus it puts my life and safety in danger, plus the A.D.A. cell is for one A.D.A. inmate.

I am a A.D.A. inmate confined to a wheel chair, I have a ulcer that open up due to having have to sit in urine & feces for days at a time because the officers don't want to let me shower to they feel like letting me shower, I have wrote several Grievances, & Spoke with the A/W OF programs, which is also the A.D.A. Coordinator, and was told that I have to shower when the c/o lets me, I have a Doctor's Order to shower daily to prevent me from getting ulcers and sitting in urine & feces, I ask the c/o's that works when I am soils, Could I have a shower, I even show the c/o the Doctor's order & show them that I am in feces, plus they have a copy in the Core, I can't go to eat because I be sitting in soil and the c/o's want let me shower, I don't even get to wash my clothes when I am soil, I am only allow to wash Friday & Monday, I have to wear soil clothes alot of times, I was told by c/o Daniels on 2-3-15, on the 7-3 shift, when I ask could I get a shower, to go fuck off, on 2-4-15, c/o Huntley on the 7-3 shift didn't let me shower, I ask this c/o Could I shower before I go to eat this c/o Huntley told me he was nnt lettine me shower

I haven't had any disciplinary since I came here on 9-4-13, until I file a grievance about Orange Crush, Tactical Team, for sexual Abuse & Assaulted that they did along with denial of using the wash room, leaving me to sit in urine for a period of time.

11-27-14, I spoke with Warden Duncan about me getting transfer to another prison, because I was getting threaten by C/O's here because I have filed a complaint and grievance's against the Lawrence C.C. administration, the Warden told me to "stop writing grievances and complaining about things, this is prison, you know better." I was put in for a medical transfer on 12-12-13, & 3-6-14, by the Psychiatrist because there is no programs for mental health inmates, I was also put in for another transfer by the Social worker on 8-14-14, and on 9-17-14, I was told by the counselor Henton, "that you are not going to get transfer as long as you keep writing grievance's".

On 1-10-15, I was seen by another Social worker, and was recommended alot of things to have did, the counselor Henton, told me that the Warden's are going to make sure you don't get nothing. On 4-11-14, the Doctor order me a single cell, the Health care administrator, Phil Martin, told the Doctor, he shouldn't, because everybody will want one, the Doctor wrote me a order to have a single cell. On 3-23-15, C/O Huntley, told me to watch out because he got something for people who write grievances against him, on 3-29-15, C/O Huntley, told me I will never get a Shower whenever he works the unit. on 3-29-15, C/O Sanders was working overtime on the 3-11 shift, Shook my cell down and put water on my legal papers, I ask this C/O for a shake down slip, this C/O told me to write a grievance about that. on 4-2-15, C/O Tanner walked up on me and ask me why you write a grievance on me like a little Bitch, one day I am going to be up in that gun tower and the gun is going to accidentally go off and hit you, and started laughing with another officer,

I am afraid for my Safety & life, So I don't go to eat, I need help, I am missing chow and losing weight, I wrote a grievance but was told nothing as of yet. on 4-5-15, C/o Johnson, and C/o Huntley was at Health care, when I got there, C/o Johnson, Said we should take you out back and put you down like a dog, C/o Huntley, Said, nobody will ever know. on 4-8-15, C/o Habling told me I couldn't Shower, that I could wait till next shift because he didn't really feel like going to get the shower chair. on 4-10-15, I Spoke with Ms. Tredway A/w OF Programs and A.D.A. Coordinator about me not getting my medically daily shower and having have to sit in urine & feces, she told me to write another grievance, I told her that the C/o wrote me a Disciplinary Report for being in the shower over 15 minutes, which is another way of punishment on me. on 4-16-15, the C/o that worked 2c on the 13-~~2~~-shift didn't let me Shower, told me I didn't have anything coming. on 4-19-15, C/o Sanders was working 2 house, I ask could I get in the shower C/o Sanders got on the speaker and said there will be no special showers today, I ask why, C/o Sanders said because he said so. I also will like to have the above prison officials prosecuted for threaten a ~~E~~WITNESSES in federal litigation, which I am, it is a federal crime to threaten a witnesses in federal litigation. I will like the court, to not have me sitting in feces and urine or be threaten by the C/os and administration, I will also like to be transfer to a prison that will not put my life, health, & safety at risk.

ILLINOIS DEPARTMENT OF CORRECTIONS
MENTAL HEALTH PROGRESS NOTEOffender Name: Phelps ID#: K78191 DOB: 9/27/74
Last, First, MI

S = subjective, offender self-report of presenting problem; O = objective, clinician view of presenting problem; A = assessment, clinician assessment of offender; P = plan, current plan, link to treatment plan

Session Date/Time: <u>12/8/13</u>		Session Duration: _____	
Appearance: <input type="checkbox"/> Appropriate <input type="checkbox"/> Inappropriate	Concentration: <input type="checkbox"/> Appropriate <input type="checkbox"/> Inappropriate		
Behavior: <input type="checkbox"/> Appropriate <input type="checkbox"/> Inappropriate	Memory: <input type="checkbox"/> Appropriate <input type="checkbox"/> Inappropriate		
Mood: <input type="checkbox"/> Appropriate <input type="checkbox"/> Inappropriate	Speech: <input type="checkbox"/> Appropriate <input type="checkbox"/> Inappropriate		
Affect: <input type="checkbox"/> Appropriate <input type="checkbox"/> Inappropriate	Thoughts: <input type="checkbox"/> Appropriate <input type="checkbox"/> Inappropriate		
Subjective, Objective, Assessment Routine psych eval per telemedicine. <u>discussed</u> <u>with it possibility</u> <u>of going to Dixon STC</u> <u>for treatment. He</u> <u>Dixon STC 2005-2006.</u> <u>He wants to go to</u> <u>Dixon STC for more</u> <u>treatment and group</u> <u>therapy. (3) SE</u> <u>20 to Effexor</u> <u>wants to stay on med</u> <u>at this time.</u>		Plan Axis I: <u>NDD-rec</u> <u>THC Dep</u> Axis II: <u>ASPD BPD Traits</u> Axis III: <u>Paraplegic</u> Axis IV: <u>Prison</u> Axis V: <u>70</u>	
MSE: Check is normal: <input checked="" type="checkbox"/> Alert and oriented to person place and year Psychomotor <u>retardation</u> and agitation Speech - rate rhythm and volume <u>Mumbled</u> <input checked="" type="checkbox"/> Eye contact <input checked="" type="checkbox"/> Cooperative with exam Mood <u>Down</u> Affect <u>Restricted</u> <input checked="" type="checkbox"/> Thought Processes <input checked="" type="checkbox"/> Thought Content Concentration/Focus <u>6</u> Judgement/Insight <u>limited</u> <u>PAUL P-SHE & others</u>		Plan: YES/No Notified patient of potential risks benefits and adverse side effects of med regimen. Patient understood and agreed with plan. Informed verbal consent obtained. <u>but Effexor 75mg TPO QHS</u> <u>(as ordered)</u> <u>support provided</u> <u>Recommends voluntary</u> <u>non emergency transfer</u> <u>to Dixon STC. He</u> <u>wants to go to Dixon STC</u> <u>for more treatment</u> <u>etc. next month sooner</u> <u>if indicated</u>	

Clinician Name (Print): Andrew J. Kowalkowski MDFacility: Lawrence Correctional CenterSignature: [Signature]
Title: Psychiatrist

ILLINOIS DEPARTMENT OF CORRECTIONS
MENTAL HEALTH PROGRESS NOTEOffender Name: Phelps

Last, First, MI

ID#:

278191

DOB:

9/27/70

S = subjective, offender self-report of presenting problem; O = objective, clinician view of presenting problem; A = assessment, clinician assessment of offender; P = plan, current plan, link to treatment plan

Session Date/Time: 3/6/14

Session Duration: _____

Appearance: ☐ Appropriate ☐ Inappropriate
 Behavior: ☐ Appropriate ☐ Inappropriate
 Mood: ☐ Appropriate ☐ Inappropriate
 Affect: ☐ Appropriate ☐ Inappropriate

Concentration: ☐ Appropriate ☐ Inappropriate
 Memory: ☐ Appropriate ☐ Inappropriate
 Speech: ☐ Appropriate ☐ Inappropriate
 Thoughts: ☐ Appropriate ☐ Inappropriate

Subjective, Objective, Assessment

Routine psych eval per telemedicine.

It is
 frustrating that he
 has not been transferred
 to Dixon STC. Recommendations
 made but pt has not
 been transferred
 yet. Compliant
 to meds. No adverse
 SEs reported.
 stressed

Plan

Axis I:

MDA-rec

Axis II:

THE top

Axis III:

ASPD BPD Traits

Axis IV:

Paraplegic

Axis V:

Prison

Axis V:

70

Plan: YES/No Notified patient of potential risks benefits and
 adverse side effects of med regimen. Patient understood and
 agreed with plan. Informed verbal consent obtained.

D/c Effexor150mgQAMEffexor 75mg 7 po BID75mg po QAM 120 Days

MSE: Check is normal:

☒ Alert and oriented to person place and year☒ Psychomotor retardation and agitation☒ Speech - rate rhythm and volume☒ Eye contact☒ Cooperative with examMood SadAffect Concomitant☒ Thought Processes☒ Thought Content

Concentration/Focus

Judgement/Insight

4+FairPAVH & JHT & Bakercom

Recommend voluntary
 non-emergency transfer
 to Dixon STC as per
 order on 12/12/13.

Support provided.

RTR next month sooner
 if indicated

Clinician Name (Print): Andrew J. Kowalkowski MDSignature: [Signature]Facility: Lawrence Correctional CenterTitle: Psychiatrist

201-22.

ILLINOIS DEPARTMENT OF CORRECTIONS
OFFENDER OUTPATIENT PROGRESS NOTES
 LAWRENCE CORRECTIONAL CENTER

Offender Information:

Phelps

Last Name

Kevin

First Name

MI

ID#:

K78191

Date/Time	Subjective, Objective, Assessment	Plans
4/10/14	LPN Note:	P) Refusal
500A	1) <u>Ms</u>	Completed
	2) Refused: <u>Eff. excretion</u>	
	3) Refusal of Medical Services	5/6/14
4/11/14	MO Note:	
245 pm	S) He feels well.	P) Permit given
	He needs permit for	
	in single A O A cell	John Coe
DP 134/81	Culture show bacteria	
P) 81, R20	that Bacteria needs	
T 96 ³	work on...	
WC	DX - Frequent UTIs	noted 800W 4/11/14

ILLINOIS DEPARTMENT OF CORRECTIONS
MENTAL HEALTH PROGRESS NOTE

Offender Name: Phelps ID#: K 78191 DOB: _____
Last, First, MI

S = subjective, offender self-report of presenting problem; O = objective, clinician view of presenting problem;
A = assessment, clinician assessment of offender; P = plan, current plan, link to treatment plan

Session Date/Time: <u>8-13-14 9:15A</u>		Session Duration: <u>30 min</u>	
Appearance:	<input type="checkbox"/> Appropriate <input type="checkbox"/> Inappropriate	Concentration:	<input type="checkbox"/> Appropriate <input type="checkbox"/> Inappropriate
Behavior:	<input type="checkbox"/> Appropriate <input type="checkbox"/> Inappropriate	Memory:	<input type="checkbox"/> Appropriate <input type="checkbox"/> Inappropriate
Mood:	<input type="checkbox"/> Appropriate <input type="checkbox"/> Inappropriate	Speech:	<input type="checkbox"/> Appropriate <input type="checkbox"/> Inappropriate
Affect:	<input type="checkbox"/> Appropriate <input checked="" type="checkbox"/> Inappropriate	Thoughts:	<input type="checkbox"/> Appropriate <input type="checkbox"/> Inappropriate
Subjective/ Objective, Assessment		Plan	
<p>Offender stated when the TACT team shook down offender's cell, they strip searched him and his cellie. Offender stated the TACT team officer told offender if he could not stand (he is wheelchair bound), he would have to lie on his bed and allow a strip search. Offender stated he was forced to remove the "disper" he wears, which he found humiliating. Offender was told to lay on his bed and was strip searched, which included anal penetration. Offender stated he felt "ashamed" and that he was "taken advantage of". Offender stated he since has felt deeper depression;</p>		<p>"Like I don't want to do anything." Offender stated when the TACT team asked his cellie to take off his clothes, the team member pushed offender's cellie and the cellie's penis crushed offender's arm. Offender stated the TACT team member stated, "You probably like that, don't you?" Offender stated after the incident, he tried to walk himself because he was not allowed to see an MHP or nurse and wanted to process the humiliation he felt. Offender stated he was not allowed to walk himself. Offender stated he talked to Lt. Vaughn about on 8-2-14 who gave him the number</p>	

Clinician Name (Print): Kathryn Davis LCSW

Signature: _____

Facility: Lawrence CCTitle: MHP LCSW

MENTAL HEALTH PROGRESS NOTE

Offender Name: Phelps ID#: K78191 DOB: _____
Last, First, MI

S = subjective, offender self-report of presenting problem; O = objective, clinician view of presenting problem;
 A = assessment, clinician assessment of offender; P = plan, current plan, link to treatment plan

Session Date/Time: <u>8-14-14 9:15 A</u>		Session Duration: <u>30 min</u>	
Appearance:	<input type="checkbox"/> Appropriate <input type="checkbox"/> Inappropriate	Concentration:	<input type="checkbox"/> Appropriate <input type="checkbox"/> Inappropriate
Behavior:	<input type="checkbox"/> Appropriate <input type="checkbox"/> Inappropriate	Memory:	<input type="checkbox"/> Appropriate <input type="checkbox"/> Inappropriate
Mood:	<input type="checkbox"/> Appropriate <input type="checkbox"/> Inappropriate	Speech:	<input type="checkbox"/> Appropriate <input type="checkbox"/> Inappropriate
Affect:	<input type="checkbox"/> Appropriate <input checked="" type="checkbox"/> Inappropriate	Thoughts:	<input type="checkbox"/> Appropriate <input type="checkbox"/> Inappropriate
Subjective, Objective, Assessment (Continued from pg 1) for the PREA hotline, which he called. Offender stated he asked to call the PREA hotline at the time but was put in the shower and when he asked to talk to a Nurse or to call the hotline, he was hit in the ribs with a "stick" (TACT Team carried wooden clubs). Offender stated he feels terrified because he does not know the identity of the TACT team member who assaulted him.		Plan: Offender will attempt to draw his feelings about the event. Educated to not let what happened inform his identity. Offender will request services when needed.	
O: Looking Down Picking at fingers Speech nearly inaudible Alert/oriented x4 Depressed Mood			
A: Trauma symptoms of shame, hypervigilance, increased depression due			

Clinician Name (Print): Kathryn Davis LCSW

Signature: _____

Facility: Lawrence CCTitle: MHP LCSW

ILLINOIS DEPARTMENT OF CORRECTIONS
MENTAL HEALTH PROGRESS NOTEOffender Name: Phelps, Kevin
LJL, First, PMID#: K78191DOB: 9-27-76S = subjective, offender self-report of presenting problem; O = objective, clinician view of presenting problem;
A = assessment, clinician assessment of offender; P = plan, current plan, link to treatment planSession Date/Time: 9-17-14 5:55pm

Session Duration: _____

Appearance: ☒ Appropriate ☐ Inappropriate
 Behavior: ☐ Appropriate ☒ Inappropriate
 Mood: ☐ Appropriate ☒ Inappropriate
 Affect: ☒ Appropriate ☐ Inappropriate

Concentration: ☐ Appropriate ☐ Inappropriate
 Memory: ☐ Appropriate ☐ Inappropriate
 Speech: ☐ Appropriate ☐ Inappropriate
 Thoughts: ☐ Appropriate ☐ Inappropriate

Subjective, Objective, Assessment

I/M reports feelings of depression that have intensified since he was reportedly assaulted by TACT team when his cell was shut down. See DOC 0080, from 8-14-14. I/M indicated that he is having intrusive thoughts and fear of being violated again if the TACT team is redeployed. I/M indicated that he has no appetite and is having difficulty sleeping. I/M reported being lethargic and increasingly isolates himself from other inmates. I/M indicated that he stays in his cell as much as possible and only goes to eat 1x per week. I/M indicated that he feels ashamed of what happened to him. I/M indicated that other inmates are aware of the situation and frequently harass him about it. I/M indicated (when questioned) that he does have occasional thoughts of self-harm when he is

Plan

being harassed by other inmates. I/M indicated that he has no plan and does not intend to harm himself currently.
 O) I/M presented w/ appropriate appearance. Direct eye contact was limited, mood was depressed - congruent affect. Speech was slow and methodical. T/P was linear. No S/S of psychosis. No immediate risk of self-harm. Concentration and memory appeared intact. I/M presented as genuine.
 OXK
 A) Axis I: MDD-rec.
 possible - trauma symptoms.
 Axis III - paraplegia.
 AL: MH2. GAF-70
 P) provided supportive therapy - refer for med. re-eval -
 - recommend transfer to different facility if I/M's account is factual. Current location continues to be traumatizing.

Clinician Name (Print): Brack ZenkleSignature: Brack Zenkle, LCSWFacility: LCCTitle: MHP, LCSW

ILLINOIS DEPARTMENT OF CORRECTIONS
MENTAL HEALTH PROGRESS NOTEOffender Name: Phelps ID#: 1K78191 DOB: _____
Last, First, MIS = subjective, offender self-report of presenting problem; O = objective, clinician view of presenting problem;
A = assessment, clinician assessment of offender; P = plan, current plan, link to treatment planSession Date/Time: 1-10-2015 9:40A Session Duration: Individual: Minutes 25Appearance: ☒ Appropriate ☐ Inappropriate
Behavior: ☒ Appropriate ☐ Inappropriate
Mood: ☐ Appropriate ☒ Inappropriate
Affect: ☐ Appropriate ☒ InappropriateConcentration: ☒ Appropriate ☐ Inappropriate
Memory: ☒ Appropriate ☐ Inappropriate
Speech: ☒ Appropriate ☐ Inappropriate
Thoughts: ☒ Appropriate ☐ Inappropriate

Subjective, Objective, Assessment

S: Client referred by MHP per request slip submitted.Requests to be re-evaluated by psychiatrist to restart meds. Reports struggling & depression "Caved in - no sleep." Some concerns comfort celling situation.Requests referral ADA coordinator and MHP stress disability & current celling. Desires change ADA assistant - reports ambivalence & wanting due to history reports feeling pressured by assistants assigned.O: Feels vulnerable per disability. Presentation suggestive distress/depression. Evidence WAI, GDS, HPLC. Physically limited. Speech slow clear/low eye contact intermittent.① HelplessnessPlan A: Symptomatic Possible benefit Vulnerable status assignment - if not already (no access by this MHP & no chart card) Prior celling review ADA assistant by MHP per some vulnerability and history reported manipulation by others① SMI
② AL 2Recommendation reassign ADA assistance & concern type assigned to meet needs. Assess single celling option - may benefit from arrangement. Refer assigned MHP to assessRecommendation assess for Vulnerable classification. Refer Back Admin Refer Psychiatric F/U P: F/U per assigned staff determine necessaryClinician Name (Print): Teresa Boose, ACSW, LCSW, CADCFacility: Lawrence CCSignature: Teresa BooseTitle: MHP-LCSW

STATE OF ILLINOIS DEPARTMENT OF CORRECTIONS
PROGRAM COMMITTEE
FINAL SUMMARY REPORT

Name: PHELPS, KEVIN

IDOC Number: K78191

Race: BLK

Hearing Date/Time: 3/22/2015 10:00 AM

Living Unit: LAW-R2-CL-01

Orientation Status: N/A

Incident Number: 201500832/1 - LAW

Status: Final

Date	Ticket #	Incident Officer	Location	Time
3/21/2015	201500832/1-LAW	HICKOX, CHRISTOPHER	HOUSING UNIT TWO C WING	08:50 AM

Offense	Violation	Final Result
307	Unauthorized Movement	Not Guilty
403	Disobeying A Direct Order Reduced to : 404	Guilty

Witness Type	Witness ID	Witness Name	Witness Status
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No Witness Requested

RECORD OF PROCEEDINGS

ODR read. Inmate pled not guilty indicating he needs more time due to being in a wheel chair.

BASIS FOR DECISION

Based on ODR reporting C/O Hickox observed Inmate Phelps in the shower for over an hour and half. RE reports Phelps disobeyed multiple direct orders to get out of shower. The ODR is being reduced to a 404 violation of rule #29, page 29 stating "inmates will be allowed no longer than 15 minutes of shower time".
 Inmate was identified by state ID card.

DISCIPLINARY ACTION (Consecutive to any priors)**RECOMMENDED**

1 Months Commissary Restriction


Basis for Discipline: Nature of offense

FINAL

1 Months Commissary Restriction

Signatures**Hearing Committee**

CARIE, JANA K - Chair Person

	03/22/15	WHI
Signature	Date	Race

Recommended Action Approved

Final Comments: N/A

STEPHEN B DUNCAN / SBD 3/23/2015

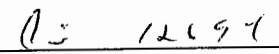
Chief Administrative Officer


 Signature

03/23/15

Date

The committed person has the right to appeal an adverse decision through the grievance procedure established by Department Rule 504: Subpart F.


 Employee Serving Copy to Committed Person


 When Served - - Date and Time